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8

9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**
11

12 In re
13 15439 National LLC,
14 Debtor.
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CASE NO. 18-51986

Chapter 11

**MOTION FOR RELIEF FROM THE
AUTOMATIC STAY AS TO
NONBANKRUPTCY ACTION;
DECLARATION OF VALERIE J.
SCHRATZ**

DATE: October 18, 2018
TIME: 1:00 PM
CRTRM.: 3020

JUDGE: Hon. M. Elaine Hammond

20
21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. INTRODUCTION**

23 The instant petition was filed in an attempt to stop Movant and Party in Interest
24 Nationstar Mortgage LLC ("Movant") from proceeding with a Motion for Summary
25 Adjudication ("MSA") in *Nationstar Mortgage LLC v. 15439 National LLC et al.*, Santa
26 Clara Superior Court Case No. 16CV292802 (the "Nonbankruptcy Action"). The MSA
27 seeks to cancel Debtor 15439 National LLC's ("Debtor") interest in the real property
28 known as 15439 National Ave., Los Gatos, CA 95032 (the "Property"), which appears to

Case No. 18-51986

1 be its sole asset. Having already obtained one continuance by claiming it needed to
2 conduct discovery, despite the fact the case has been pending for over two years and the
3 parties Debtor sought to serve discovery on had never been located, Debtor has turned to
4 bankruptcy to further delay the MSA.

5 Cause exists under 11 U.S.C. § 362 (d)(1) for relief from the automatic stay as
6 Debtor's filing was clearly done in bad faith to delay the MSA hearing rather than seek
7 legitimate business rehabilitation. Cause further exists because judicial economy favors
8 the disposition of the Nonbankruptcy Action in the State Court. The Nonbankruptcy
9 Action has been pending for over two years, the parties have exchanged discovery and are
10 weeks away from making progress on one of the major issues of the case: whether the
11 disputed instruments are subject to cancellation. The State Court is best posed to hear the
12 state law claims and determine whether Debtor actually has title to the Property, which is
13 admittedly its principal asset and likely its only asset.

14 Accordingly, Movant respectfully requests relief to proceed with the
15 Nonbankruptcy Action in a nonbankruptcy forum.

16 **II. FACTUAL BACKGROUND**

17 **A. The Nonbankruptcy Action**

18 Debtor contends to have title to the Property by virtue of a Grant Deed signed by
19 Asher Robertson the purported manager of Aurora Loan Services, a California Limited
20 Liability Company ("CA Aurora") recorded on October 5, 2015. *See Declaration of*
21 *Valerie J. Schratz ("Schratz Decl."),* Ex. 1 at ¶ 16 & Ex. C. Debtor registered with the
22 California Secretary of State a mere twenty-one days prior to the recordation of the Grant
23 Deed and listed the Property as the LLC's address. *See Schratz Decl.,* ¶ 3 & Ex. 2.
24 Debtor's current status with the Secretary of State is suspended. *Id.*

25 On March 16, 2016, Movant filed a Complaint against Debtor for Quiet Title,
26 Cancellation of Instruments, Slander of Title and Declaratory Relief on the grounds that
27 CA Aurora was a fraudulent entity who never held title to the Property. *See Schratz Decl.,*
28 ¶ 2 & Ex. 1. In reality, title to the Property was held by Aurora Loan Services, a Delaware

1 LLC ("DE Aurora") and then purchased by Nationstar in April 2012. *See Schratz Decl.*, ¶
2 2 & Ex. 1 at ¶¶ 10-13, Exs. 3-4. The Complaint seeks to cancel Debtor's Grant Deed from
3 CA Aurora and subsequently recorded Deed of Trust as CA Aurora had no interest to
4 convey to Debtor. *See Schratz Decl.*, ¶ 2 & Ex. 1.

5 On May 4, 2018, Movant filed the MSA as to the cause of action for Cancellation of
6 Instruments against Debtor and Defendant Lucino Lujano, Debtor's purported manager
7 according to the Deed of Trust and the agent who filed for bankruptcy on behalf of Debtor,
8 set to be heard on July 19, 2018. *See Schratz Decl.*, ¶ 4; see Voluntary Petition, August
9 31, 2018, ECF No. 1. Movant's MSA is supported by, among other things, declarations
10 from DE Aurora and Movant attesting to the history of the Property and the lack of
11 affiliation between CA Aurora and DE Aurora. *See Id.*, ¶ 4 & Exs. 3-4.

12 On June 27, 2018, Debtor moved to continue the MSA hearing on the grounds that
13 it needed to conduct discovery as to defaulted defendants CA Aurora and its alleged
14 manager, Asher Robertson. *See Id.*, ¶ 5. Debtor's request was granted and the MSA was
15 continued to September 6, 2018. *See Ibid.* Debtor did not conduct any additional
16 discovery or file any opposition to the MSA. *See Ibid.* Instead, on August 31, 2018, six
17 days before the continued MSA hearing and after the deadline to oppose had passed,
18 Debtor filed the instant petition in pro per. *See Voluntary Petition*, August 31, 2018, ECF
19 No. 1. As a result, the MSA was once again continued to October 30, 2018. *See Schratz*
20 *Decl.*, ¶ 5.

21 **B. The Bankruptcy Case**

22 On August 31, 2018, Debtor filed a voluntary petition in pro per for bankruptcy
23 under Chapter 11. *See Voluntary Petition*, August 31, 2018, ECF No. 1. According to the
24 petition, the Property is Debtor's principal asset. *See Id.*, at No. 4. Debtor made no
25 indication of why it is seeking relief under Chapter 11. *See Id.*, at No. 8. Debtor also
26 represented that it has no unsecured creditors and the sole creditors consist of Nationstar's
27 attorney in the Nonbankruptcy Action and Eagle Home Loans. *See 20 Largest Unsecured*
28 *Creditors*, August 31, 2018, ECF No. 2; *see Creditor Matrix*, August 31, 2018, ECF No. 3.

1 Debtor was ordered to file required documents by September 14, 2018. *See* Order
2 to File Missing Documents, September 4, 2018, ECF No. 5. Debtor failed to do so.
3 Facing an Order to Show Cause re: Dismissal for improperly filing in pro per, Debtor
4 retained counsel on September 17, 2018 and requested an extension to file the requested
5 documents. *See* Ex Parte Application by Debtor for an Extension of Time to File
6 Documents, September 17, 2018, ECF No. 15; *see also* Order Extending Time for Filing of
7 Documents, September 18, 2018, ECF No. 16.

8 **III. DISCUSSION**

9 Filing for bankruptcy imposes an automatic stay against, "any act to obtain
10 possession of property of the estate or of property from the estate or to exercise control
11 over property of the estate." 11 U.S.C. § 362 (a)(3). Under 11 U.S.C. § 362 (d)(1), a party
12 in interest can obtain relief from the automatic stay upon a showing of cause. "'Cause' has
13 no clear definition and is determined on a case-by-case basis." *In re Universal Life*
14 *Church, Inc.*, 127 B.R. 453, 455 (E.D. Cal. 1991). "Cause" can include a debtor's bad faith
15 in filing the bankruptcy and where judicial economy favors disposition in the
16 nonbankruptcy forum. *See In re Kemble*, 776 F.2d 802, 807 (9th Cir. 1985) ; *see Matter of*
17 *Little Creek Development Co.*, 779 F.2d 1068, 1073(5th Cir. 1986) .

18 "Determining whether the debtor's filing for relief is in good faith depends largely
19 upon the bankruptcy court's on-the-spot evaluation of the debtor's financial condition,
20 motives, and the local financial realities." *Matter of Little Creek Development Co.*, 779
21 F.2d at 1072. Often several, but not all, of the following non-exclusive factors are present:
22 (1) the debtor has one asset encumbered by the secured creditor; (2) there are no
23 employees except for the principles; (3) the debtor has little to no cash flow and no
24 available sources of income to sustain a plan or reorganization or to make adequate
25 protection payments; (4) the debtor has few, if any, unsecured creditors; (5) the property
26 faces foreclosure and debtor has been unsuccessful in defending actions against
27 foreclosure or litigation has progressed to a stand-still and bankruptcy offers the only
28 possibility of forestalling loss on the property; (6) there are sometimes allegations of

1 wrongdoing by the debtor or its principles and; (7) a one asset entity is create or revitalized
2 on the eve of foreclosure, also known as "new debtor syndrome." *Id*, 1072-1073. In such
3 cases, "[r]esort to the protection of the bankruptcy laws is not proper . . . because there is
4 no going concern to preserve, there are no employees to protect, and there is no hope of
5 rehabilitation, except according debtor's 'terminal euphoria." *Id*, 1073.

6 Here, several factors evidence Debtor's bad faith. Debtor likely has one asset, the
7 Property that Movant seeks to obtain title to via the Nonbankruptcy Action. Debtor was
8 created right before the purchase of the Property, named the LLC after the Property, listed
9 the Property as the LLC's address and listed the Property as Debtor's principal asset in its
10 bankruptcy petition. *See Schratz Decl.*, Ex. 1 at Ex. C; *see Id*, ¶ 3 & Ex. 2; *see* Voluntary
11 Petition, August 31, 2018, ECF No. 1. Moreover, Debtor likely has little to no cash flow
12 to sustain a plan or reorganization as Debtor's petition claims to have \$0-50,000 in assets
13 and \$500,001-\$1,000,000 in liabilities. *See* Voluntary Petition, August 31, 2018, ECF No.
14 1. Furthermore, Debtor has no unsecured creditors and has only listed two creditors:
15 Movant, who is not a creditor, and Eagle Home Loans. *See* 20 Largest Unsecured
16 Creditors, August 31, 2018, ECF No. 2; *see* Creditor Matrix, August 31, 2018, ECF No. 3.
17 It appears Eagle Home Loans is also related to the Property as real property records do not
18 show that Debtor owns any other real properties. *Schratz*, ¶ 6 & Ex. 5 at pg. 3. In sum,
19 Debtor was created for the purposes of purchasing the Property and now turns to
20 bankruptcy to shield its sole asset from an unfavorable ruling.

21 Having exhausted the potential delay tactics in the nonbankruptcy forum,
22 bankruptcy offers the only resort for avoiding the unopposed MSA hearing that would
23 cancel Debtor's Grant Deed to the Property. In *In re Siberkruas* 253 B.R. 890 (Bankr.
24 C.D. Cal. 2000), the Central District discussed numerous cases to find that the "overall
25 teaching" was that "two party disputes in state court . . . should be resolved through the
26 normal litigation process in those forums and that it is bad faith to file bankruptcy instead
27 of continuing with the normal litigation process in the nonbankruptcy forums."
28 *Siberkruas*, 253 B.R. at 895. Debtor has ignored this principle and seeks to avoid normal

1 litigation process with this filing.¹ Not only has debtor used this forum to avoid litigation,
2 but it also seems to be using this forum to avoid resolving its suspended status with the
3 California Secretary of State which prevents it from having the legal capacity to defend
4 itself. *See Schratz Decl.*, ¶ 3 & Ex. 2; *see* Cal. Corp. Code § 2205 [noting suspension
5 revokes the corporation's "powers, rights and privileges"]; *see Casiopea Bovet, LLC v.*
6 *Chiang*, 12 Cal.App.5th 656, 662 (2017). As such, the instant petition was filed in bad
7 faith such that cause for relief to proceed in a non-bankruptcy forum exists.

8 Judicial economy favors litigation in the non-bankruptcy forum. The
9 Nonbankruptcy Action has been pending for over two years with discovery being served
10 by both sides and hearings approaching on both discovery motions and the MSA, which
11 will address the important issue of whether Debtor's Grant Deed is subject to cancellation.
12 *See Schratz Decl.* ¶¶ 2, 7; *In re Roger*, 539 B.R. 837, 851 (C.D. Cal. 2015) (noting that
13 judicial economy is best served by allowing the State Court to proceed where the case is in
14 an advanced stage). Given that the Property is Debtor's principal asset, judicial economy
15 would be best served by permitting the State Court to determine whether, as Movant
16 contends, the state law claims render Debtor's alleged interest void. *Roger*, 539 B.R. at
17 851-852. Therefore, judicial economy would be best served by granting Movant relief to
18 proceed in the nonbankruptcy forum.

19 Accordingly, cause exists to justify relief to proceed with the Nonbankruptcy
20 Action in the State Court under 11 U.S.C. § 362 (d)(1).

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26 ¹ Although the Nonbankruptcy Action technically involves more than two parties, it is
27 essentially a two party dispute with Movant on the one hand and Debtor and its managing
28 agent Lucino Lujano on the other hand. All other Defendants are defaulted. *Schratz Decl.*
¶ 2.

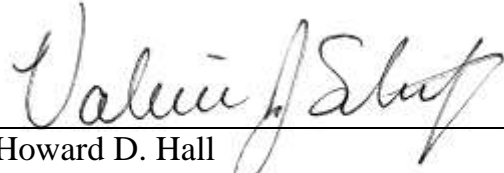
1 **IV. CONCLUSION**

2 For the reasons set forth herein, Movant respectfully requests relief to proceed with
3 the Nonbankruptcy Action in a nonbankruptcy forum.

4 DATED: September 21, 2018

HALL GRIFFIN LLP

By:

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7 _____
Howard D. Hall

8 Valerie J. Schratz

Jane M. Kutepova

9 Attorneys for Movant Nationstar Mortgage LLC
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HALL GRIFFIN

DECLARATION OF VALERIE J. SCHRATZ

I, Valerie J. Schratz, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am an attorney with the law firm of Hall Griffin LLP, counsel of record for Movant / Party in Interest NATIONSTAR MORTGAGE LLC ("Nationstar"). I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Hall Griffin LLP is counsel of record for Nationstar in *Nationstar Mortgage LLC v. 15439 National LLC et al.*, Santa Clara Superior Court Case No. 16CV292802 (the "Nonbankruptcy Action"). Attached hereto as **Exhibit 1** is a true and correct copy of the Complaint filed on behalf of Nationstar for Quiet Title, Cancellation of Instruments, Slander of Title and Declaratory Relief on the grounds that Aurora Loan Services, a California Limited Liability Company ("CA Aurora") was a fraudulent entity who never held title to the real property known as 15439 National Ave., Los Gatos, CA 95032 (the "Property"). Of the four named defendants, only Debtor and Lucino Lujano have appeared. Default has been entered against the remaining two defendants, Asher Robertson and CA Aurora. The Complaint asserts that title to the Property was held by Aurora Loan Services, a Delaware LLC and then purchased by Nationstar in April 2012. The Complaint seeks to cancel Debtor's Grant Deed from CA Aurora and subsequently recorded Deed of Trust as CA Aurora had no interest to convey to Debtor.

3. Attached hereto as **Exhibit 2** is a true and correct of the Entity Details, Registration, Amendment and SI-Complete available for 15439 National LLC via the California Secretary of State's website, <https://businesssearch.sos.ca.gov>.

4. On May 4, 2018, Movant filed a Motion for Summary Adjudication in the Nonbankruptcy Action (the "MSA") as to the cause of action for Cancellation of Instruments against Debtor and Defendant Lucino Lujano, Debtor's purported manager according to the Deed of Trust and the agent who filed for bankruptcy on behalf of Debtor, set to be heard on July 19, 2018. Movant's MSA is supported by, among other things,

1 declarations from DE Aurora and Movant attesting to the history of the Property and the
2 lack of affiliation of CA Aurora to DE Aurora. True and correct copies of these
3 declarations, exclusive of exhibits, are attached hereto as **Exhibit 3** and **Exhibit 4**.

4 5. On June 27, 2018, Debtor moved to continue the MSA hearing on the
5 grounds that it needed to conduct discovery as to defaulted defendants CA Aurora and its
6 alleged manager Asher Robertson. Debtor's request was granted and the MSA was
7 continued to September 6, 2018. Debtor did not conduct any additional discovery or file
8 any opposition to the MSA. Debtor's opposition to the MSA was due on or before August
9 23, 2018. No opposition was filed on or before August 23, 2018. On September 6, 2018,
10 the MSA was again continued to October 30, 2018 as a result of this bankruptcy filing.

11 6. Attached hereto as **Exhibit 5** is a true and correct of the Company
12 Investigation Report regarding Debtor obtained by my office from Westlaw on September
13 20, 2018.

14 7. In the Nonbankruptcy Action, the parties have exchanged discovery, and
15 Nationstar has four motions to compel currently set to be heard on November 13, 2018 and
16 November 15, 2018.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed September 21, 2018, in Santa Ana, California.

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21 
22 VALERIE J. SCHRATZ
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1 **PROOF OF SERVICE OF DOCUMENT**

2 I am over the age of 18 and not a party to this bankruptcy case or adversary
3 proceeding. My business address is 1851 East First Street, 10th Floor, Santa Ana,
4 CA 92705-4052.

5 A true and correct copy of the foregoing document entitled (*specify*): **MOTION**
6 **FOR RELIEF FROM THE AUTOMATIC STAY AS TO NONBANKRUPTCY**
7 **ACTION; DECLARATION OF VALERIE J. SCHRATZ** will be served or was
8 served (a) on the judge in chambers in the form and manner required by LBR
5005-2(d); and (b) in the manner stated below:

9 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING**

10 **(NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document
11 will be served by the court via NEF and hyperlink to the document. On **September**
12 **21, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary
13 proceeding and determined that the following persons are on the Electronic Mail
14 Notice List to receive NEF transmission at the email addresses stated below:

15 Dean Lloyd
16 Law Offices of Dean Lloyd
17 425 Sherman Ave. #330, Palo Alto, CA 94306
18 (650)328-1664; dlloyd.legaljaws@gmail.com

19 Marta Villacorta
20 Office of the United States Trustee
21 Phillip J. Burton Federal Building
22 450 Golden Gate Ave. 5th Fl., #05-0153, San Francisco, CA 94102
23 (415) 252-2062; marta.villacorta@usdoj.gov

24 ☐ Service information continued on attached page.

25 **2. SERVED BY UNITED STATES MAIL:**

26 On (date) _____, I served the following persons and/or entities at the
27 last known addresses in this bankruptcy case or adversary proceeding by placing
28 a true and correct copy thereof in a sealed envelope in the United States mail, first
class, postage prepaid, and addressed as follows. Listing the judge here
constitutes a declaration that mailing to the judge will be completed no later than
24 hours after the document is filed.

☐ Service information continued on attached page.

3. **SERVED BY OVERNIGHT MAIL:** Pursuant to F.R.Civ.P. 5 and/or controlling
LBR, on **September 21, 2018**, I served the following persons and/or entities by
overnight mail service as follows. Listing the judge here constitutes a declaration
that personal delivery on, or overnight mail to, the judge will be completed no later
than 24 hours after the document is filed.

1 The Honorable M. Elaine Hammond
2 U.S. Bankruptcy Court
3 280 South First Street, Room 3035,
4 San Jose, CA 95113

5 ☐ Service information continued on attached page.

6 I declare under penalty of perjury under the laws of the United States that the
7 foregoing is true and correct.

8 September 21, 2018

Carina Arreola Gallardo



9 Date

Printed Name

Signature

HALL GRIFFIN